APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 11,867

SIGNAL OIL AND GAS COMPANY, a corporation, *Petitioner*

v.

FEDERAL POWER COMMISSION, *Respondent*

OKLAHOMA NATURAL GAS COMPANY, *Intervenor*

LONE STAR GAS COMPANY, *Intervenor*

PETITION FOR REVIEW OF ORDER OF THE FEDERAL POWER COMMISSION.

Argued October 18, 1956

Before MARIS, GOODRICH and MCLAUGHLIN, *Circuit Judges.*

Opinion of the Court

(Filed November 20, 1956)

By GOODRICH, *Circuit Judge.*

This case raises a question of construction of section 7(e), 56 STAT. 84 (1942), 15 U.S.C.A. § 717f(e), of the Natural Gas Act. Our power to review is found in section 19(b), 52 STAT. 831 (1938), 15 U.S.C.A. § 717r(b). The facts of the case are simple and undisputed. The sole question involved is one of law having to do with the interpretation of section 7(e).

Signal Oil and Gas Company has a gasoline plant in Carter County, Oklahoma, the purpose of which is to process "casing-head" gas which is natural gas produced in association with oil in an oil well. Signal finished the construction of its plant in 1954 and made a contract with Cities Service Gas Company to sell the processed "residue" gas to it at 12 cents per Mcf (thousand cubic feet). Then it wired the Federal Power Commission for a temporary certificate on the ground that prompt action was required to prevent wasting of the gas. The Commission replied the next day by telegram granting a temporary leave to do business but explicitly stating that the permission was granted subject to any orders which the Commission might thereafter make.[1]

Signal thereupon started to do business and to sell its gas. Meanwhile proceedings under section 7(c) of the Act, looking to the issuance of a certificate of public convenience and necessity were had. The Oklahoma Natural Gas Company, Lone Star Gas Company and nine municipalities were given permission to intervene and were heard in the course of the proceedings. Eventually the Commission

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[1] The telegram stated: "This [authorization] is without prejudice to such disposition of the application [for a permanent certificate under section 7(c)] . . . as the record may require."

Signal filed its contract as a rate schedule shortly afterwards and an acknowledging letter from the Commission stated in part:

> "This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate . . . and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending . . ."

The Commission's rules put Signal on further notice that, "Acceptance for filing of any rate schedule . . . is not to be construed as approval by the Commission, *nor to serve in lieu of any of the requirements under Section 7 of the Natural Gas Act.*" (emphasis added). 18 C.F.R. 154.101 (Supp. 1956).

acted and issued a certificate of public convenience and necessity but conditioned upon a 10 cent gas rate by the applicant company instead of the 12 cent rate which it proposed and, in fact, was charging under the temporary certificate.

This is the condition which Signal says will not do at all. It insists that the Commission has no power to attach rate conditions under section 7. It makes the argument that if the Commission is dissatisfied with what Signal charges, section 5(a) of the Act provides an elaborate process for investigation and the fixing of a proper rate. If Signal itself wants to change its rate there is a provision for that in the Act, section 4(d). Signal makes much of the proposition that its rate filed at the time it asked for the emergency certificate has "become invested with a compelling and decisive legal significance." It says that this rate "is the effective rate governing petitioner's sale. It is the only legal rate." This statement is true in so far as it means that no other rate could have been charged while the temporary certificate was in effect. *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951). But it is quite another thing to say that by accepting the filing of the rate schedule when it granted the temporary certificate the Commission precluded itself from exercising any conditioning power it had under section 7(e). *Cf. Panhandle Eastern Pipe Line Co.* v. *FPC*, 232 F.2d 467, note 5 (3d Cir. 1956); *Alabama-Tennessee Natural Gas Co.* v. *FPC*, 203 F.2d 494 (3d Cir. 1953).

As originally passed, the Natural Gas Act did not specifically grant the Commission power to condition a certificate. But prior to any amendments in this respect, the Fifth Circuit held that the Commission had power to impose reasonable conditions on a certificate. One of the conditions involved was that the applicant should not charge more than the proposed rate of 10 cents per Mcf.

Arkansas-Louisiana Gas Co. v. FPC, 113 F.2d 281 (5th Cir. 1940).[2]

In 1942 section 7(e) was added to the Act. It provides in part: "The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require."

We think this language is pretty clear. Such legislative history as we have tends to show that Congress was advised of the addition to the Commission's express authority and approved thereof.[3] Several cases have recognized

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[2] The details of the rate condition appear in the Commission's order, Louisiana-Nevada Transit Co., 2 F.P.C. 546, 30 P.U.R. (n.s.) 40 (1939).

[3] In hearings on the amendment which added section 7(e) to the Act, Commissioner Manly cited the Louisiana-Nevada Transit case, *supra* note 2, as an example of the proposed application of the amendment. He said:

> "Now, that certificate was authorized to be issued with those several conditions attached and specified, for instance, the rates that would be charged these cement mills."

Mr. Boren, a Committee member, commented:

> "*I have no objection at all to the Commission having power to exact conditions such as you outline.* My objection is not to the power exercised under those conditions, but to the language of the bill which does not limit you in the sort of conditions you should exact. . . . *As to this condition you mentioned, I think you should have that power;* but then there should be some restrictions on what conditions could be exacted . . ." (emphasis added).

Mr. Boren went on to say:

> "We can limit those conditions to conditions affecting rates, services, and things of that nature."

Hearings before the House Committee on Interstate and Foreign Commerce on H.R. 5249, 77th Cong., 1st Sess., 23-24 (1941).

The House report stated:

> "The bill when enacted will have the effect of giving the Commission an opportunity to scrutinize . . . the characteristics

this power,[4] and it has never been successfully challenged.

The Commission has assumed it had the power to impose rate conditions on certificates under the provisions of section 7(e). We are advised that its annual report to Congress for 1955 shows 38 certificate orders subject to rate filing conditions during that fiscal year; 1954, 52 certificates with rate conditions; 1953, 52 such conditions and so on for several prior years. The Commission, of course, cannot enlarge its own statutory authority. But as this Court pointed out in *Panhandle Eastern Pipe Line Co. v. FPC*, 232 F.2d 467, 471 (3d Cir. 1956), "This interpretation of its authority by the Commission through the years must

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of the rate structure in connection with the proposed construction or extension at a time when such vital matters can readily be modified as the public interest may demand."

H.R. REP. No. 1290, 77th Cong., 1st Sess., 2-3 (1941).

The Senate report also indicated the amendment allowed the Commission to scrutinize rates as part of the certification process. SEN. REP. No. 948, 77th Cong., 2d Sess., 2 (1942).

[4] In *Panhandle Eastern Pipe Line Co.* v. *FPC*, 232 F.2d 467 (3d Cir. 1956), it was held that a certificate was properly conditioned on filing interruptible rate schedules (note 4). Also, the filed rate contracts provided that certain consumers reimburse the pipe line for construction costs through additional charges on gas delivered. Held: the Commission could impose the condition that no further payments be made by the consumers for construction (note 5).

Panhandle Eastern Pipe Line Co. v. *FPC*, 169 F.2d 881 (D.C. Cir.), *cert. denied*, 335 U.S. 854 (1949), held a certificate properly conditioned on filing rates satisfactory to the Commission and also S.E.C. approval of proposed financing.

In *Public Utilities Commission of Conn.* v. *FPC*, 205 F.2d 116, 120 (3d Cir. 1953) this Court noted without discussion the existence of a condition in a certificate that a satisfactory rate must be filed.

In *Alabama-Tennessee Natural Gas Co.* v. *FPC*, 203 F.2d 494 (3d Cir. 1953), a certificate was conditioned on filing a satisfactory rate. Before such a rate was filed and while a temporary rate was in effect the pipe line attempted to increase its rates by filing under section 4(d). This Court held that section 4(d) could not be used to change a rate before the condition in the certificate was met. Although there was no challenge to the Commission's power to impose a rate condition, the Court's conclusion that the Commission had such power was a necessary part of its holding.

be given considerable weight," especially since left undisturbed by Congress when the Act was amended in 1954.[5]

Signal rejects the binding effect on it of the cases cited. It correctly points out that those cases concern pipe lines and Signal is an "independent producer," another class of "natural-gas company" which has been regulated under the Act only since the decision in *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, *rehearing denied*, 348 U.S. 851 (1954). Signal also points out differences in some of the Commission's rules and procedures applicable to each class. Agreed that there are such, we fail to see how these differences are relevant to the issue of the Commission's power to condition certificates under section 7(e).

Signal suggests that even if the Commission has power to condition a certificate on the filing of a rate satisfactory to the Commission, it has no power to condition a certificate on a particular rate. Since setting a particular rate is not of itself improper,[6] we see no reason why a distinction should be drawn between the two types of conditions. The Commission informs us its annual report to Congress for 1952 revealed that sometimes, "the applicant may be required to file a definite and specific rate [as a condition to receiving a certificate]; i.e., the proper rate is spelled out in dollars and cents." Congress left this practice undisturbed. See *Panhandle Eastern Pipe Line Co. v. FPC*, 232 F.2d 467, 471 (3d Cir. 1956).

The question of the rate to be fixed as a condition to the granting of the certificate was gone into at length in the proceedings before the Commission. The record shows that at the time of the proceedings all other sales in the area were at 10 cents or less; the average rate was 9.9 cents.

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[5] 68 STAT. 36 (1954), adding § 1(c), 15 U.S.C.A. § 717c.

[6] The Commission is specifically given power to set a particular rate by section 5(a). The setting of a particular rate was not disapproved in Alabama-Tennessee Natural Gas Co. v. FPC, 203 F.2d 494 (3d Cir. 1953) and Arkansas Louisiana Gas Co. v. FPC, *supra*.

There was evidence introduced by the intervenors that an increase in price paid by one purchaser would increase the market price in the whole area, and if Signal received 12 cents, the market price would rise to 12 cents to the great expense of the ultimate consumers. Signal offered no evidence to justify the reasonableness of the proposed 12 cent rate, nor did it claim that the 10 cent rate was confiscatory. Under the circumstances, substantial evidence supports the Commission's finding that public convenience and necessity required the certificate to be conditioned on a 10 cent rate.

Our conclusion is that what the Commission did here was clearly within its statutory authority and the order of the Commission is affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 11,867

SIGNAL OIL AND GAS COMPANY, a corporation, *Petitioner*

v.

FEDERAL POWER COMMISSION, *Respondent*
OKLAHOMA NATURAL GAS COMPANY, *Intervenor*
LONE STAR GAS COMPANY, *Intervenor*

ON PETITION FOR REVIEW OF ORDER OF THE FEDERAL POWER COMMISSION

Present: MARIS, GOODRICH and MCLAUGHLIN, *Circuit Judges.*

Judgment

This cause came on to be heard on the record from the Federal Power Commission, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said Federal Power Commission in this case be, and the same is hereby affirmed.

Attest:
IDA O. CRESKOFF
Clerk

November 20, 1956

APPENDIX C

Pertinent Provision of the Constitution of the United States

AMENDMENT V

"No person shall be * * * deprived of life, liberty or property, without due process of law; * * *."

Pertinent Provisions of Natural Gas Act

Sec. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a

decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

7 (c)[1] No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That

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[1] Subsection 7 (c) was amended February 7, 1942 by Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83.

the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest. [52 Stat. 825 (1938), as amended, 56 Stat. 83 (1942); 15 U. S. C. § 717f (c) (1946)][2]

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[2] As originally enacted June 21, 1938 by Public Law No. 688, 75th Congress, Chapter 556, 3d Session [H. R. 6586], 52 Stat. 825, Section 7 (c) read as follows:

"(c) No natural-gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural-gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof: *Provided, however,* That a natural-gas company already serving a market may enlarge or extend its facilities for the purpose of supplying increased market demands in the territory in which it operates. Whenever any natural-gas company shall make application for a certificate of convenience and necessity under the provisions of this subsection, the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission. In passing on applications for certificates of convenience and necessity, the Commission shall give due consideration to the applicant's ability to render and maintain adequate service at rates lower than those prevailing in the territory to be served, it being the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest." (52 Stat. 825 (1938))

7 (d)[3] Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commisison shall, by regulation, require. [56 Stat. 84 (1942); 15 U. S. C. § 717f (d) (1946)]

7 (e)[4] Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require. [56 Stat. 84 (1942); 15 U. S. C. § 717f (e) (1946)]

Pertinent Provisions of Commission's General Rules and Regulations

Sec. 154.92 (b) Every independent producer who, subsequent to the effective date of these rules, proposes to initiate an interstate transportation or sale of natural gas

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[3] Subsection 7 (d) was added February 7, 1942 by Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83, 84.

[4] Subsection 7 (e) was added February 7, 1942 by Public Law No. 444, 77th Congress, Chapter 49, 2d Session [H. R. 5249], 56 Stat. 83, 84.

subject to the jurisdiction of the Commission to an existing or new customer shall file with the Commission not less than 30 days nor more than 90 days prior to the date such transportation or sale is proposed to be initiated a rate schedule, as defined in Section 154.93 hereof, setting forth the terms and conditions of service and all rates and charges for such transportation or sale. To each such rate schedule there shall be attached a statement showing estimated sales and billing for the first month of service, in sufficient detail to show method of billing and prices used. The statement shall also give the proposed date of commencement of service. A complete copy of all material shall be furnished to each purchaser under the rate schedule. With each such filing there shall be submitted a list of parties to whom such material has been mailed. (18 CFR 154.92(b)).

Sec. 154.93. For the purpose of Sections 154.92 through 154.101 hereof "Rate Schedule" shall mean the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954, showing the service to be provided and the rates and charges, terms, conditions, classifications, practicse, rules and regulations affecting or relating to such rates or charges, applicable to the transportation of natural gas in interstate commerce or the sale of natural gas in interstate commerce for resale subject to the jurisdiction of the Commission. (18 CFR 154.93).

Sec. 154.101. Acceptance for filing of any rate schedule or part thereof, or of a Notice of Cancellation or Termination, is not to be construed as approval by the Commission, nor to serve in lieu of any requirements under Section 7 of the Natural Gas Act. (18 CFR 154.101)

Sec. 157.23 (b) No independent producer of natural gas shall, subsequent to the issuance of these rules, engage in

any new service with respect to the transportation of natural gas in interstate commerce or sale of such natural gas for resale in interstate commerce subject to the jurisdiction of the Commission without approval of the Commission, evidenced by a certificate of public convenience and necessity authorizing such transportation or sale upon application (original and 14 copies) pursuant to sections 157.24 through 157.27. Independent producers whose sales of natural gas subject to the jurisdiction of the Commission will amount in the aggregate to less than 1,000,000 Mcf annually may, in lieu of the foregoing, file an application (original and five copies) containing the information called for by Exhibit A. Where the economic feasibility of a new pipe line or important extension or expansion of an existing pipe line depends upon proof of an adequate gas supply, all related applications necessary to effectuate the service shall be filed within time to enable the Commission to consider all related matters concurrently. (18 CFR 157.23(b))

Sec. 157.24 (a) Every application for a certificate of public convenience and necessity required under § 157.23 hereof shall be filed with the Commission and shall set forth in the order indicated the following:

(1) The exact legal name of the applicant; if the applicant is a corporation, the State or territory under the laws of which the applicant is organized, the location of applicant's principal place of business, and the names of all States where applicant is authorized to do business.

(2) The same data required by paragraph (1) of this section with respect to any predecessor in interest of the applicant bona fide engaged in the transportation or sale of natural gas subject to the jurisdiction of the Commission on June 7, 1954.

(3) The name, title, and post office address of the person to whom correspondence or communications in regard to the application is to be addressed. Unless advised to the

contrary, the Commission will serve all notices, orders, and other papers, service of which is required, upon the person so named.

(4) A statement of pertinent facts showing that applicant or a predecessor in interest of applicant was a natural-gas company within the meaning of the Natural Gas Act and was bona fide engaged in transportation of natural gas in interstate commerce or sale of natural gas in interstate commerce for resale on June 7, 1954, or upon commencement of the proposed transportation or sale of natural gas would be a natural-gas company. Without limitation upon the requirements of this paragraph, such statement shall include a showing of:

(i) The sources of the gas (a) produced by applicant or predecessor and (b) purchased by applicant or predecessor. In case of gas produced, give the approximate location of the fields and the points of delivery, and in the case of gas purchased, the names of the sellers and points of delivery.

(ii) The route or routes of the pipe lines over which such transportation or sale of natural gas was or will be accomplished.

(iii) Any communities served on June 7, 1954 or proposed to be served (a) at wholesale or (b) at retail.

(iv) The names of, and points of delivery to, any main line industrial customers (i.e., not located within communities under (iii) above) purchasing or proposing to purchase 25,000 Mcf or more per year. Such main line industrial customers purchasing 100,000 Mcf or more per year, shall be given the identifying designations I-1, I-2, etc., which designations shall be used in lieu of names on Exhibits A of the application.

(v) Any major appurtenant properties and facilities, such as compressor stations, gasoline plants, dehydration plants, purification plants, and gas storage projects.

Section 157.24 (b) Any information required which is already on file with the Commission may be incorporated by reference. If an applicant is unable to secure required information in time for filing with his application, a statement setting forth the reasons for his failure to file the missing information should be submitted with a request for further time, which may be granted up to 90 days. (18 CFR 157.24)

Sec. 157.25 There shall be filed with the application as a part thereof the following exhibits.

Exhibit A. Map. Each applicant under section 157.24 shall file as a part of his application a general map or sketch of applicant's facilities for the production, transportation, or sale of natural gas as Exhibit A. The map need be only of sufficient scale and in sufficient detail to show the general geographical location of the properties.

(a) The location of gas fields from which gas is or will be produced by applicant or affiliated companies or at which gas is or will be purchased by applicant.

(b) The location of applicant's principal pipe lines and the diameters thereof.

(c) The points of connection with the facilities or pipeline systems of other companies.

(d) The designation of points of delivery of gas to applicant's system.

(e) The communities served or proposed to be served at wholesale and at retail, indicating wholesale by a small square and retail by a small circle.

(f) The designation of points of delivery of gas from applicant's system, including points of delivery to main line industrial customers purchasing 100,000 Mcf or more per year. Such main line industrial customers are to be designated I-1, I-2, etc., as indicated in § 157.24(a)(4)(iv).

Exhibit B. Contracts. Conformed copy of each contract for sale or transportation of gas for which a certificate is requested: *Provided, however,* That contracts on file with the Commission in other proceedings may be included by reference as heretofore provided in § 157.24 (b); *and provided further,* That acceptance of contracts hereunder shall not be construed as approval of the rates therein contained under Part 154 hereof or under the Natural Gas Act. Escalation clauses in contracts submitted hereunder on or after May 1, 1955 will not be considered in support of any certificate application or otherwise given effect by the Commission if under such clauses: (a) provision is made for adjustment of the price of the seller by reason of changes in the prices received by the purchaser upon resale; or (b) if provision is made for adjustment of the price of the seller by reason of the payment of higher prices by other purchasers in the same or other producing areas. (18 CFR 157.25)

Sec. 157.26 An application under § 157.24 and § 157.25 shall be in compliance with § 1.15 and § 1.17 of the Rules of Practice and Procedure, and in addition the original of the application (which shall include the originals of all exhibits accompanying said application) shall be verified under oath by a person having knowledge of the matters therein set forth. (18 CFR 157.26)

Sec. 157.27 The applicant may be required to furnish such additional information as the Commission may deem pertinent. (18 CFR 157.27)

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 772

SIGNAL OIL AND GAS COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinions and orders of the Federal Power Commission (R. 433a–468a, 494a–499a) are not reported. The opinion of the United States Court of Appeals for the Third Circuit (Pet. App. 1a–7a) is reported at 238 F. 2d 771.

JURISDICTION

The judgment of the Court of Appeals was entered on November 20, 1956 (Pet. App. 7a–8a). The petition for a writ of certiorari was filed on February 14, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1) and Section 19 (b) of the Natural Gas Act, 15 U. S. C. 717r (b).

QUESTION PRESENTED

Whether, in the circumstances of this case, the Federal Power Commission properly conditioned its grant under Section 7 of the Natural Gas Act of a certificate of public convenience and necessity—authorizing petitioner, Signal Oil and Gas Company, to sell natural gas for resale in interstate commerce to Cities Service Gas Company—on the requirement that the rate charged for such sale be 10 cents per Mcf, the highest price prevailing in that area, rather than 12 cents per Mcf provided in the Signal-Cities Service contract.

STATUTES INVOLVED

The pertinent provisions of the Natural Gas Act of 1938, 52 Stat. 821, as amended, 15 U. S. C. 717, *et seq.*, are set forth in the Appendix *infra*, pp. 20–23.

STATEMENT

The Federal Power Commission granted to petitioner Signal Oil and Gas Company a certificate of convenience and necessity for sale of certain gas to Cities Service Gas Company on the condition that Signal file a rate of 10 cents per Mcf for the gas to be sold, rather than the 12 cent rate provided in the sales contract between Signal and Cities Service. Over Signal's objection to that condition, the Court of Appeals affirmed (Pet. App. 1a–7a). The pertinent facts may be summarized as follows:

Proceedings leading up to the Commission's order

By contract dated July 6, 1954, Signal Gas and Oil Company agreed to sell and deliver from its Fox Gaso-

line Plant,[1] then under construction in Southern Oklahoma, a minimum daily amount of 30,000 Mcf of natural gas to Cities Service Gas Company for resale in Kansas and Missouri. The contract, which was to be effective for 20 years, provided for a price of 12 cents per Mcf for the gas, subject to a price adjustment or renegotiation provision effective each five-year period and a "favored nations" clause, which provided for Cities Service's paying Signal a price equal to the highest price it paid for gas purchased under similar circumstances in that area (R. 167a–187a).

Recognizing that, as a result of the sale, it would become a natural gas company subject to the Commission's jurisdiction under the Natural Gas Act, Signal, on August 24, 1954, shortly after the completion of its Fox Plant, filed with the Commission an application, under section 7 (c) of the Act, *infra*, pp. 22–23, for authority to make the sale to Cities Service in accordance with the contract (R. 221a–227a).[2]

On the same day, August 24, 1954, Signal, asserting

[1] The Fox Gasoline Plant was a plant for the processing of casinghead gas (*i. e.*, gas produced in association with oil) by removing the heavier hydrocarbon components. After removal of any impurities and providing additional compression, if required by contract, the natural gas remaining (usually called residue gas) is ready for delivery to a purchaser.

[2] Cities Service simultaneously filed an application for authority to construct and operate the pipeline necessary to connect its existing facilities to the Fox Plant where the delivery was to be made (R. 213a–217a). The application was consolidated for hearing with Signal's (R. 246a–249a) and was ultimately granted (R. 454a). There is no issue in this case as to the Cities Service certificate.

that the Fox Plant was wastefully flaring more than 30,000 Mcf of gas per day, requested the Commission to issue a temporary certificate for the sale in the interest of conservation (R. 228a). The Commission granted this request with the *caveat* that its action was "without prejudice to such disposition of [Signal's application for permanent authority] as the record may require" (R. 228a). Thereafter, on September 20, 1954, the Commission gave notice of Signal's application and set it for hearing on October 28, 1954 (R. 246a–249a).

Meanwhile, on September 14, 1954, Oklahoma Natural Gas Company, a large purchaser in the area and a local distributor of natural gas within Oklahoma, had applied to the Commission for leave to intervene in the proceeding and for vacation of petitioner's temporary certificate. Oklahoma Natural also protested petitioner's proposed 12 cent rate schedule, on the grounds that the prevailing price in the area was 10 cents per Mcf (R. 229a–238a), and that by virtue of the "favored nations" clauses in its purchase contracts the effect of permitting the 12 cent rate contemplated by the Signal-Cities Service contract would be to increase the currently established price in the area and thereby to imperil Oklahoma Natural's entire price structure (R. 237a). Oklahoma Natural concluded by urging the Commission to reject the 12 cent rate schedule and to establish the current price for the sale at 10 cents (R. 237a–238a). Lone Star Gas Company, a "natural-gas company" which also purchased large volumes of gas in the area, similarly

sought to intervene in opposition to allowance of the 12 cent rate; it urged that the Commission should condition, as it had frequently in the past, its grant of a certificate—here, on the requirement that the rate not exceed the current 10 cent price paid in the area (R. 289a–299a). The Commission, in permitting these interventions (R. 300a–303a, 307a–308a),[3] rejected Oklahoma's requests relating to the temporary certificates, pointing out, however, that they "are not a commitment that certificates * * * will be issued after the necessary hearings * * * nor that any particular rates will be authorized if certificates are issued" (R. 302a).[4]

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[3] The Commission also permitted the intervention of nine municipalities, all customers or representing customers of Cities Service (R. 307a). They also were opposed to the 12 cent rate provided in the Signal-Cities Service contract (R. 287a–288a).

[4] Subsequently, on December 2, 1954, the Commission advised Signal that the Signal-Cities Service contract had been accepted for filing and had become effective on October 8, 1954. However, the Commisison admonished (R. 319a):

"This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; * * * and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company."

The Commission's regulations are to the same effect:

"*Acceptance for Filing Not Approval.*—Acceptance for filing of any rate schedule or part thereof * * * is not to be construed as approval by the Commission, nor to serve in lieu of any requirement under Section 7 of the Natural Gas Act. [18 C. F. R. 154.101.]"

Since there was no question that Signal was a natural gas company subject to the Gas Act and that it had otherwise satisfied the requirements for the granting of a certificate, the principal issue before the Commission related to the contention of the intervenors and the Commission's staff that the granting of the certificate should be on the condition that the rate to be charged be 10 cents per Mcf.

Dealing with this issue, the Commission first rejected Signal's claim that it was without such authority (R. 443a):

> * * * The Commission has long followed the practice of imposing rate conditions where appropriate in granting certificates of public convenience and necessity and the power so to do has been upheld by the courts. * * *

In this connection, the Commission pointed out that the 12 cent rate schedule, although accepted for filing, had not been approved, and that the temporary authorization had been given without prejudice to such disposition of Signal's application as the record might require (R. 445a).

Turning to the propriety of such a condition in this case, the Commission noted that the record evidence showed without contradiction that the present maximum price for the more than 400,000 Mcf of natural gas sold per day in the area was 10 cents per Mcf, having increased steadily from 5 cents per Mcf from 1945–1950 and from about 6 cents from 1950 to 1952 (R. 441a).

The Commission continued (R. 442a):

> The contention of Oklahoma Natural and Lone Star that a 12 cent sales price by Signal will "drive" the maximum price in the area from 10 to 12 cents is not contradicted by Signal, and a witness for Cities Service admitted that this would be the effect of the sale as proposed. Although the "favored nations" clauses in the existing contracts of Oklahoma Natural and Lone Star would not be "triggered" by the price Cities Service pays Signal, nor would any of Cities Service's "favored nations" clauses be "triggered", the record clearly shows that the price proposed by Signal would inevitably cause a general area price increase for all major sales to 12 cents per Mcf as the result of future purchases of new supplies of gas. * * *[5]

The Commission also commented that Oklahoma Natural had shown that a general two cent increase in the cost of purchased gas would cost it approximately $2,000,000 a year and that Lone Star had stated that the comparable cost to it would be approximately $1,140,000 a year (R. 442a).

Rejecting Signal's argument that the 12 cent rate was reasonable because reached by arm's length bargaining under free competitive economic conditions,[6]

[5] The Commission emphasized that this conclusion was reached without consideration of the fact that, under *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672, the Commission had jurisdiction over the sales to Lone Star and Cities Service (R. 442a). However, since Oklahoma Natural operated entirely within Oklahoma, the Commission's control over the sales in the area is not complete.

[6] In questioning whether the contract was an arm's length transaction, the intervenors pointed out that, since Cities Service has an affiliate engaged in producing gas in the area, Cities Service would

the Commission found that the evidence did not show that Signal's proposed 12 cent rate was just and reasonable and that Signal had failed effectively to challenge either the evidence attacking its proposed rate or that supporting a 10 cent rate (R. 451a). Consequently, in view of the admitted injury which would result to other gas purchasers in the area from the allowance of the 12 cent rate—injuries which could not be undone in the time-consuming proceeding under Section 5 (a) of the Act, pressed by Signal as the proper procedure—the Commission ordered that the certificate should be conditioned on the fixing of a 10 cent rate (R. 452a–453a).[7]

In so ordering, the Commission pointed out that it was not finding the 10 cent rate to be just and reasonable, but that it was fixing a 10 cent rate as a condition of the certificate merely as an interim measure calculated best to protect the public interest by forestalling a perhaps unwarranted area price increase (R. 451a). Signal, the Commission concluded, was not precluded from seeking a change in its rate structure as provided in Section 4 (d) of the Act, and in proceedings on such a proposed change the Commission could pass on the reasonableness of the changed rates (R. 452a).

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ultimately profit from the general 2-cent price increase which would be precipitated by the 12 cent rate contemplated by the contract. The Commission, however, pointed out that there was no evidence that Signal was aware of such a plan or that it was affiliated with Cities Service. Although the Commission refused to find that the contract was not the result of arm's length bargaining, "the opportunity for profit to * * * Cities Service is present, and is a consideration in this case" (R. 449a–450a).

[7] Two Commissioners dissented (R. 456a–466a).

ARGUMENT

1. Relying on Section 5 (a) of the Act, *infra*, pp. 21–22, which authorizes the Commission after hearing to pass on the reasonableness of "any rate * * * demanded, observed, charged, or collected by any natural-gas company * * *" in connection with activities subject to the Commission's jurisdiction, Signal urges that the Commission has no authority to impose the 10 cent rate in connection with its grant of authority to make the sale to Cities Service. According to Signal, the imposition of such a condition creates the possibility of conflict between Section 5 (a) and Section 7 (e) of the Act (*infra*, pp. 21–22, 23)—the provision authorizing certification of new sales or services, under which this rate condition was imposed—and such possibility of conflict, it is said, should be avoided in favor of a harmonious interpretation of these provisions "so as to produce a symmetrical whole" (Pet. 12).

(*a*). These arguments are primarily based on a misunderstanding of the scope and effect of Section 5 (a). That Section, on its face, relates only to rates already legally effective, *i. e.*, "rate[s] * * * demanded, observed, charged or collected * * *." Here, there was no such legally effective rate,[8] for a rate cannot be effective until the underlying sale itself has been authorized, and the authority to make the Cities Service

[8] Neither the rate charged under the temporary certificate, which was effective only during the period covered by that certificate, nor the filing of the Signal-Cities Service contract with the Commission, resulted in a legally effective rate under the permanent certificate, particularly in view of the explicit conditions attached to the Commission's actions. See *supra*, pp. 4–5 and fn. 4.

sale was given by the Commission simultaneously with its imposition of the 10-cent rate condition. Accordingly, the instant case does not concern rates already effective, as to which Section 5 (a) is applicable, but only rates to be charged for a sale then being authorized. Since the authority to impose rate conditions under Section 7 (e) operates only as to the latter class of rates, such authority plainly complements Section 5 (a) and forms part of an integrated statutory structure. There is neither inconsistency nor conflict.

(*b*). This conclusion is confirmed by the language of Section 7 (e), its legislative history, and the relevant judicial decisions and administrative practice, as well as by important practical considerations. All these clearly demonstrate that the Commission has authority to impose such rate conditions.

Section 7 (e) expressly provides:

> * * * The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder *such reasonable terms and conditions* as the public convenience and necessity may require. [Emphasis added.]

This plenary language, in itself, plainly vests the requisite authority in the Commission, but any doubts on that score are removed by the legislative history of the provision, which was added to the Act in 1942, four years after the statute's original enactment in 1938. Even prior to this addition, the Commission had conditioned its grant of a certificate on the requirement that the rate be not in excess of 10 cents

per Mcf (*Louisiana-Nevada Transit Co.*, 2 F. P. C. 546) and the condition was sustained upon judicial review. *Arkansas Louisiana Gas Co.* v. *Federal Power Commission*, 113 F. 2d 281 (C. A. 5). This very rate condition was referred to and accepted in the House hearings on the 1942 amendment as an illustration of how the proposed amendment would operate. See Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 5249, pp. 23–24 (Commissioner Manly, Representative Boren). The interested Committees indicated their understanding that the amendment would give the Commission wide control over the rate structure proposed in connection with a certificate application. S. Rep. No. 948, 77th Cong., 2d Sess., pp. 1–2; H. Rep. No. 1290, 77th Cong., 1st Sess., pp. 2–3. For example the House Committee stated (*ibid.*):

> * * * The bill when enacted will have the effect of giving the Commission an opportunity to scrutinize the financial set-up, the adequacy of the gas reserves, the feasibility and adequacy of the proposed services, and the characteristics of the rate structure in connection with the proposed construction or extension at a time when such vital matters can readily be modified as the public interest may demand. Without such authority, the Commission may find itself confronted with a situation where it must either accept conditions which appear undesirable in the public interest, or require, subsequent to construction, changes which may have much more serious practical consequences than they

would have had if they had been made before the public was asked to finance the enterprise.[9]

In accordance with this clear legislative purpose, the Commission has, on many occasions, imposed rate conditions in granting certificates,[10] and the industry appears generally to have accepted them as valid. In contrast to the large number of such conditions imposed by the Commission, judicial review has been sought in very few instances. Significantly in each instance the Commission's action was affirmed. See *Panhandle Eastern Pipe Line Co.* v. *Federal Power*

[9] Signal says that the Committee report uses the term "scrutinize," and that fixing rates is far more than "scrutiny" (Pet. 13). However, when read in context and particularly together with the statutory language itself, there can be no doubt of the Congressional intention expressed in the excerpt we have quoted in the text.

[10] According to the Commission's 1955 Annual Report to Congress (p. 136), thirty-eight certificate orders were issued subject to rate filing conditions during that fiscal year; the 1954 Report (p. 128) lists fifty-two certificates with conditions; the 1953 Report (p. 112), fifty-two; the 1952 Report (p. 111), seventeen; and the 1951 Report (p. 110), thirty-six. In its 1952 Report, the Commission explained its rate condition practice in detail (pp. 110–111):

"* * * rate conditions are in one of four general forms, depending upon the particulars of the case involved. First, the applicant may be required to file a definite and specific rate; i. e., the proper rate is spelled out in dollars and cents. Second, the condition may require the filing of rates satisfactory to the Commission, shortly before commencement of the proposed service. * * * Third, the Commission may allow certain rates to become effective for an interim period of operation, with permanent rates to be filed on the basis of actual operating experience during the interim period. Fourth, a certificate authorizing deliveries to a new resale customer, by an existing pipeline system, may be conditioned to require that the sale be initiated under the pipeline company's applicable existing rate schedule. * * *"

Commission, 232 F. 2d 467 (C. A. 3), certiorari denied, 352 U. S. 891; *Public Utilities Commission of Connecticut* v. *Federal Power Commission*, 205 F. 2d 116 (C. A. 3); *Alabama-Tennessee Natural Gas Co.* v. *Federal Power Commission*, 203 F. 2d 494 (C. A. 3); *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 169 F. 2d 881 (C. A. D. C.), certiorari denied, 335 U. S. 854.[11]

Moreover, it is noteworthy that the effect of Signal's position, *i. e.* that the Commission is precluded from considering proposed rates in connection with certificate application under Section 7, would be to leave natural gas companies free to file as their initial rates whatever rates they desired, however unreasonable on their face, and to retain the benefits thereof until the termination of a Section 5 (a) proceeding. As the Commission noted, "[a] proceeding under Section 5 (a) * * * is certain to entail a long delay in terms of time of final decision, and there is no way of undoing the damage done to the public in the interim period" (R. 450a–451a).[12]

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[11] It is, of course, irrelevant that these cases involved pipeline companies whereas Signal is an independent producer. The Natural Gas Act, including Section 7 (e), relates to the regulation of natural-gas companies, and by virtue of this Court's decision in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672, independent producers engaged in wholesale sales of gas in interstate commerce, as well as pipeline companies, are natural-gas companies subject to the Act.

[12] Upon a finding under Section 5 (a) that a rate charged is unreasonable, the Commission may only prescribe the rate which is thereafter to be observed. There is no provision for the refund of the excess over the reasonable rate charged for the period of the pendency of the Section 5 (a) proceedings, let alone for the period prior thereto.

2. Signal also argues that the Commission acted improperly by imposing a condition specifically fixing a 10 cent rate without finding the rate reasonable. In support of this position, Signal asserts that the rate conditions previously imposed by the Commission in other cases did not fix a specific rate but rather required only that the applicant file "a tariff satisfactory to the Commission at least six months prior to the commencement of operation", and that in the interim the Commission held hearings on the proposed rates (Pet. 16).[13]

However, the situations in the cases referred to by Signal were entirely different from that of the instant case; while such a rate condition was adequate to protect the public interest in those cases, the facts of the present case fully demonstrate that the specific 10 cent condition imposed here was likewise in the public interest. The earlier cases all concerned applications for authority to construct and operate new facilities; since the construction could not begin until authorized by the Commission, there was necessarily a substantial lapse of time before actual operation could begin, and, during this period, ample time was available for consideration of the proposed rate structure.

In contrast, in the present case Signal was in a position immediately to sell the gas once it had obtained the requisite authorization. Indeed, Signal

[13] Signal suggests that these hearings were held under Section 5 (a). However, examination of the orders involved reveals that the hearings were held under the authority of Section 7 and without reference to Section 5 (a).

had sought and had been granted a temporary certificate to sell the gas during the pendency of the permanent certificate proceedings, in order to prevent the wasteful flaring of gas (R. 228a; *supra,* pp. 3–4). Plainly, therefore, if the Commission were to grant the certificate as expeditiously as possible, the type of general rate condition preferred by Signal was inappropriate.

Moreover, in sanctioning a rate which was to be effective immediately, the Commission was confronted with the conflicting rates sought by the various parties. Signal was pressing for the 12 cent rate provided in its Cities Service contract. On the other hand, the intervenors were urging a 10 cent rate. In choosing between these alternative rates, the Commission noted that Signal had not only failed to discharge its burden of showing the 12 cent rate to be just and reasonable and in the public interest, but also it had not challenged effectively the evidence supporting a 10 cent rate or shown that the 10 cent rate would be confiscatory (R. 451a). *Supra,* pp. 7–8. In addition, according to the evidence which Signal had not disputed, 10 cents was the highest rate then prevailing in the area and a 12 cent rate would cause a general price rise resulting in substantial injury aggregating about $4,000,000 a year to the companies purchasing gas in the area and their customers (R. 440a–442a, 451a–452a). *Supra,* pp. 6–7.

Since this injury would not be avoided by permitting the 12 cent rate to become effective and thereafter instituting a rate investigation under Section 5 (a)

(see *supra*, pp. 8, 13), the Commission adopted the course which would best protect the public interest—including Signal's interest, as well as that of the purchasers in the area and the ultimate consumers. By imposing the 10 cent rate condition, the Commission held the line and prevented a perhaps unwarranted price increase. At the same time, it did not preclude Signal, if it chose to accept the certificate with the condition, from seeking, virtually immediately, to increase the rate to 12 cents under the procedures provided in Sections 4 (d) and 4 (e) of the Act, *infra*, pp. 20–21.[14] And it was in order to make it clear that it was not prejudging the reasonableness of a 12 cent rate in such a proceeding,[15] that the Commission took pains expressly to state that the 10 cent rate was not definitive nor was it being found to be just and reasonable. In these circumstances, the 10 cent rate condition, designed as it was as "an interim measure calculated best to protect the public interest in a timely manner" (R. 451a), was certainly a reasonable condition required by the public convenience and necessity within the meaning of Section 7 (e). Cf. *Ameri-*

[14] We do not understand Signal's suggestion that it might not be able to seek such a rate increase because Cities Service might not consent (Pet. 18). The Signal-Cities Service contract provided for a 12 cent rate, the very rate Signal would seek.

[15] Under Sections 4 (d) and 4 (e), *infra*, pp. 20–21, the Commission may suspend the effective date of the proposed increase for a period of up to five months and if, by the end of the suspension period, the Commission has not yet made its determination as to the reasonableness of the proposed increase, the new rate may be charged, subject to refund of the excess, if any, over the reasonable rate ultimately determined by the Commission.

can Power & Light Co. v. *Securities and Exchange Commission*, 329 U. S. 90, 112.

3. Signal's final contention is that it was deprived of due process in that the Commission's notice of hearing did not advise that rates would be an issue in the proceedings (Pet. 20).[16] But, apart from the consideration that the Commission cannot anticipate and enumerate in its notice of hearing all the issues which the evidence ultimately shows to be important, the fact is that Signal was aware, as early as the Commission was, that rates would be an important, if not the crucial, issue in the proceeding.

The notice setting the application for hearing (R. 236a) denied Signal's request for a shortened hearing and set the matter for formal hearing because of the filing of petitions to intervene (R. 246a–249a). And Oklahoma Natural's petition to intervene, to which the notice obviously referred, specifically objected to Signal's proposed rate and requested immediate remedial action by the Commission (R. 236a). *Supra*, p. 4. Subsequent documents filed by Oklahoma Natural strongly reiterated the same objection (R. 257a, 500a). Moreover, as early as October 12, 1954, still before the hearings were had, Lone Star, in its petition to intervene, expressly requested "that any certificate issued in these proceedings be conditioned so as to require Signal to file an initial rate

[16] Signal asserts also that it had no notice that there was to be a "rate investigation" (see *e. g.*, Pet. 22). As we have already shown, there was no rate investigation as such; all the Commission did was to prescribe a temporary interim rate directed at dealing with the problem confronting the Commission, leaving Signal to file rate increases under Section 4 (d) of the Act.

schedule which does not exceed the current price paid in the area in which Signal's plant is located. * * *" (R. 299a). *Supra*, pp. 4–5. And in denying Oklahoma Natural's requests to vacate the temporary certificate, the Commission specifically put Signal on notice that the course of action ultimately adopted might be taken. Referring to the temporary certificate issued, the Commission stated that "Such authorizations are not a commitment * * * that any particular rates will be authorized if certificates are issued * * *" (R. 302a). *Supra*, p. 5.

Despite the claim of lack of notice, there is no suggestion that Signal did not have ample opportunity to prepare its case on the rate issue. The hearings were held over a period of almost two months, with long recesses. Even if Signal became aware that the rate was in issue for the first time at the hearings—and the fact is that the principal focus of the hearings was on the rate issue—Signal had ample opportunity during the long recesses between hearings to prepare whatever evidence it desired to support its proposed rate and counter the opposing rate evidence introduced.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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APPENDIX

The Natural Gas Act of 1938, 52 Stat. 821, as amended, 15 U. S. C. 717, *et seq.*, provides, in pertinent part, as follows:

> SECTION 4. (d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. * * *
>
> (e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided,* That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as

would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

SECTION 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classifica-

tion, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

* * * * *

SECTION 7. [as amended by 56 Stat. 83] (c) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: * * *

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending

the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

* * * * *

(e) Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

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